

# OVERLOOKED AND UNPROTECTED: CENTRAL AMERICAN INDIGENOUS MIGRANT WOMEN IN MEXICO

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## I. INTRODUCTION

The number of indigenous migrants fleeing Central America is rapidly growing. However, the Mexican government's focus is one of border enforcement rather than humanitarian protection. Given that the Mexican government's federal immigration system is failing to adequately protect migrants, this article examines whether the existence of legal pluralism in Mexico provides any additional protection for Central American indigenous migrant women. It finds that indige-

nous justice systems have a limited ability to assist migrants and considers alternative avenues to promote protection, including ways in which indigenous rights organizations can be engaged to aid vulnerable migrant women.

The U.S. Committee for Refugees and Immigrants (“USCRI”) has advanced the rights of displaced people for over 100 years. USCRI provides social services to Central American children which provides the authors with an insight into the unique challenges and dangers facing these women in their countries of origin and during their journeys north. Maria,<sup>1</sup> a USCRI client, is an indigenous teen from Guatemala who fled to the United States. At the age of six, Maria’s family began to force her to work over 50 hours a week in the fields, but the Guatemalan government failed to intervene on Maria’s behalf. Maria barely speaks any Spanish and never attended school. Being denied the opportunity to socialize and build her confidence has had a psychological impact. It further puts Maria at high risk for human trafficking and abuse because she is less likely to have the confidence to assert her rights.

## II. BACKGROUND

The Northern Triangle of Central America (“NTCA”), composed of El Salvador, Guatemala, and Honduras, has become one of the most dangerous places on earth.<sup>2</sup> As a result, many indigenous persons, suffering due to increasing violence, have been forced to journey north in an effort to find safety.

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1. All client names have been changed to preserve anonymity. We thank Tiffany Nelms, Associate Director of Children’s Services at USCRI, for contributing the client stories shared in this article.

2. See World Bank Sustainable Dev. Dep’t, *Crime and Violence in Central America: A Development Challenge* 1 (2011) (discussing the ways in which high crime and violence are key development issues in Central America), [http://siteresources.worldbank.org/INTLAC/Resources/FINAL\\_VOLUME\\_I\\_ENGLISH\\_CrimeAndViolence.pdf](http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf); CLARE R. SEELKE, CONG. RESEARCH SERV. GANGS IN CENTRAL AMERICA, at i (2014) (“Gang-related violence has been particularly acute in Honduras, El Salvador, and Guatemala, which have had among the highest homicide rates in the world.”), <http://fas.org/sgp/crs/row/RL34112.pdf>.

### A. *Increase in Migration from the Northern Triangle*

Increasing levels of violence in the region have created a humanitarian crisis, leaving many people with no alternative but to flee their homes in search of refuge in other countries. In 2014 nearly three times as many women crossed the U.S. border than in 2013.<sup>3</sup> Violence against women in the NTCA is contributing to this increase. Guatemala has the third highest rate of femicide globally, and Honduras ranks not far behind at seventh.<sup>4</sup> In Guatemala, two women are murdered, on average, each day.<sup>5</sup> Violence against women in the NTCA extends beyond femicide. In Honduras, for example, 27% of women have reported suffering physical violence during their lifetimes.<sup>6</sup>

In 2014, in response to a dramatic increase in individuals fleeing the NTCA, Mexico bolstered immigration enforcement measures along its southern border.<sup>7</sup> In 2015, the Mexican government deported 190,366 people.<sup>8</sup> Of those deported 150,170 were from the NTCA, including 70,493 Guatemalans, 50,527 Hondurans, and 29,150 Salvadorans.<sup>9</sup>

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3. Astrid Galvan, *US Border Patrol: Female Agents Wanted*, FED. NEWS RADIO (Dec. 9, 2014), <http://federalnewsradio.com/business-news/2014/12/us-border-patrol-female-agents-wanted/>.

4. *Femicide: A Global Problem*, SMALL ARMS SURVEY RESEARCH NOTES, no. 14, Feb. 2012, at 1, [http://www.smallarmssurvey.org/fileadmin/docs/H-Research\\_Notes/SAS-Research-Note-14.pdf](http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf).

5. U.N. Women, *Fast Facts: Statistics on Violence against Women and Girls*, <http://www.endvawnow.org/en/articles/299-fast-facts-statistics-on-violence-against-women-and-girls.html> (last visited Feb. 4, 2016).

6. CENTRO DE DERECHOS DE MUJERES ET AL., *STATUS OF VIOLENCE AGAINST WOMEN IN HONDURAS 2* (June 2014), [http://www.derechosdelamujer.org/tl\\_files/documentos/derechos\\_humanos/Violence-Women-Honduras-RapporteurONU-June2014.pdf](http://www.derechosdelamujer.org/tl_files/documentos/derechos_humanos/Violence-Women-Honduras-RapporteurONU-June2014.pdf).

7. Adam Isacson et al., *Increased Enforcement at Mexico's Southern Border: An Update on Security, Migration, and U.S. Assistance*, WASHINGTON OFFICE ON LATIN AM. [WOLA] 4 (Nov. 2015), [http://www.wola.org/sites/default/files/WOLA%20Report\\_Increased%20Enforcement%20at%20Mexico%E2%80%99s%20Southern%20Border\\_Nov%202015.pdf](http://www.wola.org/sites/default/files/WOLA%20Report_Increased%20Enforcement%20at%20Mexico%E2%80%99s%20Southern%20Border_Nov%202015.pdf).

8. Unidad de Política Migratoria, *Boletín Mensual de Estadísticas Migratorias 2015 [Monthly Bulletin of Immigration Statistics 2015]* 126, 130 (2015) [hereinafter *Boletín*], [http://www.gobernacion.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines\\_Estadisticos/2015/Boletin2015\\_.pdf](http://www.gobernacion.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2015/Boletin2015_.pdf).

9. *Id.* at 126.

### B. *Indigenous Peoples in the Northern Triangle*

People who are indigenous suffer widespread discrimination worldwide, as evidenced by the adoption of Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries by the United Nations International Labour Organization (“ILO”).<sup>10</sup> Convention 169 indicates that “in many parts of the world [indigenous] peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded.”<sup>11</sup>

Indigenous populations have been disproportionately affected by the humanitarian crisis in the NTCA. According to its government, Guatemala is a pluricultural society, where 40% of its population is indigenous and 25 languages are spoken.<sup>12</sup> The Guatemalan indigenous population suffers widespread poverty, with 74% living in poverty and 24% in extreme poverty (compared to 56.19% and 15.59% of the general population respectively).<sup>13</sup> The indigenous population in Honduras makes up 12% of the overall population.<sup>14</sup> As in Guatemala, a disproportionate number of indigenous people live in extreme poverty in Honduras,<sup>15</sup> including an estimated 88.7% of indigenous and Afro-Honduran children (compared to 10.4% of all Honduran children).<sup>16</sup>

The Mexican government only tracks migrants entering the country by nationality, making it difficult to confirm what

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10. International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, Preamble, June 27, 1989, 1650 U.N.T.S. 384 [hereinafter C169].

11. *Id.*

12. SECRETARÍA DE PLANIFICACIÓN Y PROGRAMACIÓN DE LA PRESIDENCIA, *Guatemala un País Pluricultural [Guatemala is a Pluricultural Country]*, [http://www.segeplan.gob.gt/index2.php?option=com\\_content&do\\_pdf=1&id=85](http://www.segeplan.gob.gt/index2.php?option=com_content&do_pdf=1&id=85) (last visited Feb. 8, 2016).

13. *Id.*

14. ORGANIZACIÓN INTERNACIONAL DEL TRABAJO, TRABAJO INFANTIL Y PUEBLOS INDÍGENAS: EL CASO HONDURAS [CHILD LABOR AND INDIGENOUS PEOPLES: THE CASE OF HONDURAS] 32 (2007), [http://www.unicef.org/honduras/pueblos\\_indigenas.pdf](http://www.unicef.org/honduras/pueblos_indigenas.pdf).

15. *Situation of Human Rights in Honduras*, Inter-Am. Comm’n H.R. [IACHR], ¶ 417, OAS Doc. OEA/Ser.L/V/II.Doc. 42/15 rev. (Dec. 31, 2015), <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>.

16. *Id.* ¶ 418.

percent of the apprehended NTCA migrants are indigenous. However, while migration is a multi-causal phenomenon, poverty and lack of opportunities are major factors driving migration from Central America. As noted above, in the NTCA, poverty among indigenous communities is proportionally higher than it is among the general population; thus, it can be deduced that a large percentage of Central American migrants are indigenous. In USCRI's work with unaccompanied children, it has found that the majority of children fleeing from Guatemala are indigenous. Moreover, Asociación Pop No'j, an indigenous rights organization in Guatemala, has confirmed that the majority of migrants leaving Guatemala are indigenous.<sup>17</sup>

The majority of NTCA migrants apprehended in Mexico are fleeing from Guatemala and Honduras.<sup>18</sup> Consequently, this article will focus on vulnerabilities of migrants fleeing from those two countries and protection measures in Mexico.

### III. REFUGEE RIGHTS<sup>19</sup>

Through international and national law, Mexico has instituted a progressive legal framework for the protection of refugees. This framework informs the scope of protection available, at least theoretically, to migrants fleeing the NTCA.

#### A. *International Protection*

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the international treaties that govern refugee protection worldwide. Under these instruments, a refugee is an individual who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing

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17. ASOCIACIÓN POP NO'J, DIAGNÓSTICO SOBRE MUJERES Y NIÑAS MIGRANTES Y TRATA DE PERSONAS EN EL SUR DE HUEHUETENANGO [DIAGNOSTIC ABOUT MIGRANT WOMEN AND GIRLS AND HUMAN TRAFFICKING IN SOUTH HUEHUETENANGO] 5 (2016), [http://issuu.com/somospopnoj/docs/diagnostico\\_vf](http://issuu.com/somospopnoj/docs/diagnostico_vf).

18. Guatemalans represented the largest portion of those apprehended, followed by Hondurans. *Boletín, supra* note 8, at 126.

19. Mexican law uses the term "refugee" to cover individuals who would be considered "asylum-seekers" under U.S. law.

to such fear, is unwilling to avail himself of the protection of that country.”<sup>20</sup> The 1967 Protocol expanded the scope of the refugee definition by removing certain geographical and temporal restrictions set forth in the 1951 Convention.<sup>21</sup> Both instruments prohibit “refoulement,” or the return of a refugee to his country of origin if the individual faces danger to his life or freedom.<sup>22</sup> Mexico is a signatory to both the 1951 Convention<sup>23</sup> and its 1967 Protocol.<sup>24</sup>

In addition, Mexico is party to the Cartagena Declaration on Refugees.<sup>25</sup> The Cartagena Declaration was created due to a collective recognition by Member States of the unique and evolving needs of refugees in the Americas.<sup>26</sup> The Cartagena Declaration is significant because it expands the definition of a refugee from the 1951 Convention to include:

“persons who have fled their country because their lives, safety or freedom have been threatened by *generalized violence*, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”<sup>27</sup>

20. Convention Relating to the Status of Refugees, art. I(A)(2), *opened for signature* July, 28 1951 189 U.N.T.S. 150 (entered into force 22 Apr. 1954) [hereinafter 1951 Convention].

21. Protocol Relating to the Status of Refugees, art. I(2)–(3), *opened for signature* Jan. 31, 1967, 606 U.N.T.S. 267, (entered into force 4 Oct. 1967) [hereinafter 1967 Protocol].

22. *Id.* art. VII(1); 1951 Convention, *supra* note 20, art. 33.

23. See *Declarations and Reservations to the 1951 Convention Relating to the Status of Refugees*, UNHCR, <http://www.unhcr.org/3d9abe177.html> (noting Mexico’s accession on June 7, 2000 and reservations to Articles 17(2)(a)–(c), 26, 31(2), and 32); see also *Mexico Withdraws Reservations to Refugee and Statelessness Conventions*, UNHCR, Feb. 11, 2014, <http://www.unhcr.org/52fa05e79.html> (noting Mexico’s withdrawal of its reservation to Article 32).

24. *Declarations and Reservations to the 1967 Protocol Relating to the Status of Refugees*, UNHCR, <http://www.unhcr.org/4dac37d79.html> (noting Mexico’s accession on June 7, 2000).

25. KARINA SARMIENTO ET AL., CARTAGENA +30: INTERNATIONAL PROTECTION AND EFFECTIVE INTEGRATION: RECOMMENDATIONS FROM CIVIL SOCIETY FOR THE CURRENT STATE OF ASYLUM AND STATELESSNESS IN LATIN AMERICA AND THE CARIBBEAN (Clay Johnson et al. eds., trans., 2014), [http://refugees.org/wp-content/uploads/2015/12/cartagena\\_INGLES\\_2803.pdf](http://refugees.org/wp-content/uploads/2015/12/cartagena_INGLES_2803.pdf).

26. *Id.* at 14–15.

27. U.N. Colloquium on the Int’l Protection of Refugees in Central America, Mexico and Panama, U.N. High Comm’n for Refugees, Cartagena

### B. *Mexico's Asylum Law*

While Mexico is a signatory to the international instruments described above, it was not until 2011, when then Mexican President Felipe Calderón signed the Law on Refugees and Complementary Protection, that Mexico officially established a national legal framework and mechanism for protecting refugees.<sup>28</sup> Mexico's law, written with the Office of the United Nations High Commissioner for Refugees' ("UNHCR") technical support, incorporates the broader definition of refugee found in the Cartagena Declaration. Thus, the law grants protection for people whose lives have been threatened by generalized violence but would not be considered refugees under the 1951 Convention. It also considers gender as grounds for persecution, incorporates the principle of non-refoulement, and includes provisions regarding non-discrimination.<sup>29</sup>

## IV. LEGAL PLURALISM

In order to fully understand the legal framework in which indigenous migrants operate, it is necessary to consider indigenous peoples' rights under international law and the scope of legal pluralism in Mexico.<sup>30</sup> Thus, this section will briefly review the development of indigenous peoples' rights under international and Mexican law and two recent examples of indigenous justice systems.

### A. *Indigenous Peoples' Rights in International Law*

International law, specifically Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent

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Declaration on Refugees, art. III(3) (Nov., 22 1984), <http://www.unhcr.org/45dc19084.html> (emphasis added).

28. *Ley Sobre Refugiados y Protección Complementaria Mexico* [Law on Refugee and Complementary Protection] [LRPC], *Diario Oficial de la Federación* [DOF] 05-12-2010.

29. *Id.*

30. Legal pluralism is "the existence of multiple norms, institutions, practices and beliefs for regulation and conflict resolution within a single jurisdiction." Rachel Sieder & María Teresa Sierra, *Indigenous Women's Access to Justice in Latin America* 3 (Chr. Michelsen Inst., Working Paper No. 2010:2, 2010), <http://www.cmi.no/publications/3880-indigenous-womens-access-to-justice-in-latin>.

Countries, has played a key role in the recent advances in indigenous rights in Mexico. Convention 169, approved by the ILO in 1989 and ratified by Mexico in 1990,<sup>31</sup> was the first international convention to address the rights of indigenous people.<sup>32</sup> In part, Article 2 requires parties to “promot[e] the full realisation of the social, economic and cultural rights of these [indigenous] peoples with respect for their social and cultural identity, their customs and traditions and their institutions.”<sup>33</sup> It further specifies that indigenous people shall have the right to retain their own institutions when they are not incompatible with the rights defined in the national legal system or international human rights.<sup>34</sup>

### B. *Mexican Law & The Fight for Indigenous Peoples' Rights*

In an effort to satisfy the principles of Convention 169 and recognize the multicultural character of the country, the Mexican government amended Article 4 of the Constitution in 1992.<sup>35</sup> The new language stated:

Mexico is a multicultural nation based originally upon its indigenous peoples. The law will protect and promote the development of their languages, cultures, practices, customs, resources and specific forms of social organization [sic], and will guarantee its members effective access to state jurisdiction. In legal matters relating to land issues, the legal practices and customs [of the indigenous] will be taken into account, in the terms established by the law.<sup>36</sup>

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31. C169, *supra* note 10; Int'l Labour Org. [ILO], *Ratifications for Mexico*, [http://www.ilo.org/dyn/normlex/en/f?P=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102764](http://www.ilo.org/dyn/normlex/en/f?P=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102764) (last visited Jan. 14, 2016).

32. Sieder & Sierra, *supra* note 30, at 5.

33. C169, *supra* note 10, art. 2.2(b).

34. *Id.* art. 8.2.

35. R. Aída Hernández Castillo, *National Law and Indigenous Customary Law: The Struggle for Justice of Indigenous Women in Chiapas, Mexico*, in *GENDER, JUSTICE DEVELOPMENT AND RIGHTS* 384, 389 (Maxine Molyneux & Shakra Razavi eds., 2002); Guillermo de la Peña, *A New Mexican Nationalism*, 12 *NATIONS AND NATIONALISM* 279, 287 (2006) (“Simultaneously, Salinas promoted a change in Article 4 [of the Constitution], in order to comply with the principles of ILO Convention 169.”).

36. de la Peña, *supra* note 35, at 287 (translating Article 4).



This reform marked the first time the Mexican constitution recognized the indigenous population.<sup>37</sup> However, indigenous groups criticized the amendment as containing ambiguous language and failing to incorporate vital aspects of Convention 169 relating to recognition of indigenous normative systems, land reform, and public participation.<sup>38</sup>

On January 1, 1994, prior to negotiation and institution of a regulatory law implementing the Article 4 reform, the Ejército Zapatista de Liberación Nacional (“EZLN”) began an indigenous uprising in Chiapas, Mexico.<sup>39</sup> The Zapatistas demanded indigenous autonomy, social justice, and rights for indigenous women.<sup>40</sup> Peace talks resulted in the San Andrés Accords, signed in February 1996, which provided for land reform and indigenous autonomy.<sup>41</sup> The Accords stated that “indigenous peoples have the right to free self-determination.”<sup>42</sup> Realization of the agreement remained elusive, however, as President Zedillo blocked its implementation.<sup>43</sup>

In 2001, the Mexican Congress passed the Law on Indigenous Rights and Culture, which amounted to a revised and limited version of the Accords.<sup>44</sup> The law reiterates the multicultural character of Mexico but places restrictions on indigenous autonomy. It grants state-level legislatures the authority to recognize indigenous peoples and determine the scope of their autonomy.<sup>45</sup> Many indigenous groups viewed it as a failure to address the origins of the EZLN uprising,<sup>46</sup> noting that

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37. *Id.* at 288.

38. *Id.*

39. Hernández Castillo, *supra* note 35, at 385.

40. *Id.* at 387.

41. Jan Rus et al., *Introduction to MAYAN LIVES, MAYAN UTOPIAS: THE INDIGENOUS PEOPLES OF CHIAPAS AND THE ZAPATISTA REBELLION 1*, 17 (Jan Rus et al. eds., 2003).

42. Hernández Castillo, *supra* note 35, at 387.

43. R. Aída Hernández, *Indigenous Law and Identity Politics in Mexico*, POL. & LEGAL ANTHROPOLOGY REV. [POLAR], May 2002, at 90, 93.

44. María Teresa Sierra, *The Revival of Indigenous Justice in Mexico: Challenges for Human Rights and the State*, 28 POLAR 52, 54 (2005).

45. Hernández, *supra* note 35, at 93.

46. *Id.*

the law does not create a new relationship between the Mexican state and the indigenous people.<sup>47</sup>

### C. *Indigenous Justice Systems*

Indigenous justice systems have a long history in Mexico and Latin America. In fact, during Spanish colonial rule, the laws called *Leyes de Indios* formally recognized indigenous justice systems.<sup>48</sup> “[I]ndigenous leaders administered justice amongst their communities for minor disputes, and functioned as mediators between colonial administrators and their indigenous subjects.”<sup>49</sup> After independence, indigenous justice continued to operate in a de facto manner.<sup>50</sup>

One relatively recent example of informal indigenous justice is the *Policía Comunitaria*, established in 1995 in the state of Guerrero, Mexico, and the corresponding *Coordinadora Regional de Autoridades Comunitarias*. The community police system was developed in response to rampant violence plaguing the poor region. The founders justified its establishment on the modifications to Article 4 of the Constitution and ILO Convention 169.<sup>51</sup> Due to concerns that those arrested by the *Policía Comunitaria* were not being tried by state authorities, local leaders founded the *Coordinadora Regional de Autoridades Comunitarias* in 1997. The *Coordinadora Regional* organizes a community assembly to conduct a trial of many arrested by the community police.<sup>52</sup> Individuals arrested for major crimes, such as murder and rape, are still turned over to state authorities, however, the local system handles lesser offenses, such as theft and disorderly conduct.<sup>53</sup>

In addition to informal mechanisms, certain forms of indigenous justice systems have been officially recognized in response to the constitutional reforms. The Mexican judiciary

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47. See Sierra, *supra* note 44, at 54 (stating that “the reform did not . . . establish a basis for a new relationship between indigenous peoples and the state”).

48. Sieder & Sierra, *supra* note 30, at 3.

49. *Id.*

50. *Id.*

51. Allison M. Rowland, *Local Responses to Public Insecurity in Mexico* in PUBLIC SECURITY AND POLICE REFORM IN THE AMERICAS 187, 195 (2006).

52. *Id.* at 10.

53. *Id.* at 2.

established the *Juzgado Municipal Indígena* in Puebla,<sup>54</sup> subsequently recognized in the law titled *Ley Orgánica del Poder Judicial del estado de Puebla*, in 2002.<sup>55</sup> The court was created “to administer justice in accordance with indigenous customary law.”<sup>56</sup> The court considers cases dealing with “minor” issues, and it is designed to both promote multicultural legal practices and judicial economy.<sup>57</sup>

## V. VIOLENCE AGAINST FEMALE MIGRANTS & THE INCREASED RISKS FOR INDIGENOUS WOMEN

Despite laws aimed at reducing violence against women, many women from the NTCA report that they are unable to find adequate protection in their home countries.<sup>58</sup> Even after leaving their violent countries of origin, however, migrant women face a myriad of dangers in their quest for protection. Indigenous women are a uniquely vulnerable subset of this already highly victimized group.

### A. Vulnerabilities of Migrant Women

Female migrants face a myriad of dangers on their journeys, including extortion, rape, and abuse by coyotes<sup>59</sup> and government officials.<sup>60</sup> As of 2010, an estimated 60% of women suffered rape during their journey through Mexico;<sup>61</sup> while some current reports estimate that this statistic has increased to 80% of migrant women.<sup>62</sup> According to Amnesty

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54. Four other courts of this nature have been created in the state of Puebla, and indigenous municipal courts have also been created in Chiapas. Sierra, *supra* note 44, at 55-56.

55. *Id.*

56. *Id.*

57. *Id.*

58. Rowland, *supra* note 51, at 4.

59. Human smugglers who, for a fee, aid individuals attempting to cross the border without documentation.

60. U.N. High Commissioner for Refugees, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* 43 (2015), <http://www.unhcr.org/5630f24c6.html>.

61. AMNESTY INT'L, INVISIBLE VICTIMS 15, AI Index AFR 41/014/2010 (Apr. 2010).

62. Erin Siegal McIntyre & Deborah Bonello, *Is Rape the Price to Pay for Migrant Women Chasing the American Dream?*, FUSION (Sept. 10, 2014), <http://fusion.net/story/17321/is-rape-the-price-to-pay-for-migrant-women-chasing-the-american-dream/>.

International, many smugglers view sex as part of their fee for transporting women, and some even “require women to have a contraceptive injection prior to the journey as a precaution against pregnancy resulting from rape.”<sup>63</sup>

In addition to rape, female migrants face the possibility of kidnapping and human trafficking during their journeys. In the last few years, such abuse of migrants has increased due to the fact that organized criminal groups along the migrant transit route have diversified their activities to include human trafficking, kidnapping, and extortion.<sup>64</sup> Recognizing the vulnerabilities of migrants, the Attorney General of Mexico created the Crimes Investigation Unit for Migrants and Mexican Foreign Support Mechanism of Search and Investigation on December 18, 2015.<sup>65</sup>

### B. *Increased Risks for Indigenous Women*

In the Northern Triangle, indigenous women are often forced into early marriages which threaten their physical and mental health. In Guatemala, individuals can marry at age 14 with parental consent; however this law is not strictly enforced, especially in rural areas such as Petén, a highly indigenous area in the north.<sup>66</sup> This lack of enforcement is evidenced by one of USCRI’s indigenous clients, Rigoberta, who married a 20-year-old man in Guatemala at age 13. Rigoberta was pressured into this early marriage due to a pregnancy, which under Guatemalan law should have been treated as a crime because the father of the child — now her husband — was 20. Early marriages put indigenous girls at increased risk for sexual violence, domestic violence, educational withdrawal, and medical compli-

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63. AMNESTY INT’L, *INVISIBLE VICTIMS*, *supra* note 61, at 15.

64. Adam Isacson et al., *Mexico’s Other Border*, WASHINGTON OFFICE ON LATIN AM. [WOLA] 17 (Aug. 2014), <http://www.wola.org/sites/default/files/Mexico%27s%20Other%20Border%20PDF.pdf>.

65. *Acuerdo A/117/15 por el que se crea la Unidad de Investigación de Delitos para Personas Migrantes y el Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación y se establecen sus facultades y organización*, DIARIO OFICIAL DE LA NACIÓN (Dec. 18, 2015), [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5420681&fecha=18/12/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015).

66. Stephanie Sinclair, *Child, Bride, Mother*, N.Y. TIMES, (Feb. 8, 2015), [http://www.nytimes.com/interactive/2015/02/08/opinion/sunday/exposures-child-bride-mother-stephanie-sinclair.html?smid=pl-share&\\_r=0](http://www.nytimes.com/interactive/2015/02/08/opinion/sunday/exposures-child-bride-mother-stephanie-sinclair.html?smid=pl-share&_r=0).

cations from their pregnancies.<sup>67</sup> USCRI has seen first-hand that indigenous girls are often forced to flee their homes to escape the abuse and violence that plagues their lives, communities, and countries.

Unfortunately, language barriers and illiteracy further increase the likelihood that indigenous women will be victimized and concurrently decrease their ability to seek protection and redress. Many indigenous migrants from Guatemala speak limited to no Spanish. Indigenous women in Honduras also have lower literacy rates than the general population.<sup>68</sup> In addition to making indigenous women susceptible to victimization, these characteristics make it less likely that they will understand or effectively assert their rights. Such barriers to justice may explain why Guatemalans only submitted 108 asylum claims in Mexico in 2015.<sup>69</sup> One would expect the number of asylum applications to be much higher given that Mexico deported over 70,000 Guatemalans that year.<sup>70</sup>

Given the heightened risk factors, some indigenous women take measures to blend in prior to their flight. These women give up their traditional outfits to buy modern clothing. Some are even taught to speak Spanish with a Mexican accent so they are not targeted for discrimination and abuse. However, for those who do not succeed and are deported back to their home countries, the consequences can be devastating. Guatemalan women who unsuccessfully attempt to migrate north may face rejection from their communities upon their return.<sup>71</sup> In communities like that of the Maya Chuj, these unsuccessful migrants are ostracized because of the well-known risk of rape during the journey.<sup>72</sup> The rejection, in turn, creates increased incentives for the women to re-attempt the dangerous trip north.

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67. *Id.*

68. *Situation of Human Rights in Honduras*, *supra* note 15, at 160.

69. COMISIÓN MEXICANA DE AYUDA A REFUGIADOS [COMAR], *Estadísticas [Statistics]*, (last visited May 23, 2016), [http://www.comar.gob.mx/es/COMAR/Estadísticas\\_COMAR](http://www.comar.gob.mx/es/COMAR/Estadísticas_COMAR).

70. *Id.* at 126.

71. Katya Cengel, *Migrant Kids Highlight Legacy of Violence and Inequality toward Maya*, AL JAZEERA AM. (Oct. 6, 2015), <http://america.aljazeera.com/multimedia/2015/10/migrant-kids-highlight-legacy-of-violence-and-inequality-toward-maya.html>.

72. *Id.*

## VI. ACCESS TO PROTECTION

The Mexican government has failed to provide adequate humanitarian protection to NTCA migrants. Unfortunately, indigenous justice systems are unlikely to fill the protection gaps left by the federal structure. In addition to considering the deficiencies and limitations with these systems, this section will consider alternative avenues to promote protection of vulnerable migrants.

### A. *Lack of Adequate Protection by the Federal Government*

While international treaties to which Mexico is a party guarantee the right of migrants to ask for and receive protection, Mexico's immigration system is based on border enforcement. In 2014, Mexican President Enrique Peña Nieto implemented the *Programa Frontera Sur* (Southern Border Program) to "protect and safeguard the human rights of migrants who enter and pass through Mexico, as well as establish order at international crossings to boost development and security in the region."<sup>73</sup> In practice, however, the program has primarily focused on border security and enforcement. To implement the program, the government sent hundreds of immigration officials to the southern border. Consequently, since the inception of *Programa Frontera Sur* in July 2014<sup>74</sup> to June 2015 Mexico detained 137,375 migrants from the NTCA.<sup>75</sup> This

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73. Jose Knippen et al., *An Uncertain Path: Justice for Crimes and Human Rights Violations against Migrants and Refugees in Mexico*, WASHINGTON OFFICE ON LATIN AM. [WOLA] 8 (2015), <http://www.wola.org/sites/default/files/Uncertain%20Path.pdf> (quoting Presidencia de la República, "Pone en marcha el presidente Enrique Peña Nieto el Programa Frontera Sur").

74. Unidad de Política Migratoria [UPM], BOLETÍN MENSUAL DE ESTADÍSTICAS MIGRATORIAS 142 (2014), [http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines\\_Estadisticos/2014/Boletin\\_2014.pdf](http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2014/Boletin_2014.pdf).

75. Unidad de Política Migratoria [UPM], BOLETÍN MENSUAL DE ESTADÍSTICAS MIGRATORIAS 135 (2015), [http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines\\_Estadisticos/2015/Boletin2015\\_.pdf](http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2015/Boletin2015_.pdf).

represents a 64% increase when compared to July 2013<sup>76</sup> to June 2014<sup>77</sup> previous year.

This increase in border enforcement is particularly alarming given the growing number of Central American migrants seeking asylum in the region. The UNHCR reported that the number of NTCA migrants seeking asylum in southern Central America and Mexico in 2014 was 13 times higher than it had been in 2008.<sup>78</sup> Yet, despite increasing asylum applications and Mexico's progressive humanitarian laws, the Mexican Commission for Refugee Help (COMAR-Comisión Mexicana de Ayuda a Refugiados) reported that Mexico granted asylum to only 21% of the cases filed in 2014.<sup>79</sup> Similarly, in the first 10 months of 2015, COMAR received 2,745 asylum applications with a mere 24.7% approved (680).<sup>80</sup> Contrary to what this low approval rate might suggest, a UNHCR study found that of those NTCA child migrants interviewed, 72% of Salvadorans, 38% Guatemalans, and 57% of Hondurans raised international protection concerns.<sup>81</sup>

The fact that Mexico, a country with highly inclusive asylum laws, grants protection to so few individuals suggests pervasive problems with Mexico's immigration system. As an initial matter, very few migrants apply for asylum in Mexico. This is likely because, despite requirements to the contrary, many migrants are not informed of their right to asylum when they enter detention centers.<sup>82</sup> In 2013, the Inter-American Commission reported that 68% of people in Mexico's largest detention center, Siglo XXI Immigration Station in Tapachula, were

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76. Unidad de Política Migratoria [UPM], BOLETÍN MENSUAL DE ESTADÍSTICAS MIGRATORIAS 139 (2013), [http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines\\_Estadisticos/2013/Boletin\\_2013.pdf](http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2013/Boletin_2013.pdf).

77. /UPM, BOLETÍN MENSUAL DE ESTADÍSTICAS MIGRATORIAS 2014, *supra* note 74.

78. U.N. High Comm'n for Refugees, *Women on the Run*, *supra* note 60, at 2.

79. COMAR, Estadísticas [Statistics] 2014, *supra* note 74.

80. COMAR, *Estadísticas* [Statistics], *supra* note 69.

81. U.N. High Comm'n for Refugees, *Children on the Run* 9–10 (2014), [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf).

82. Isacson et al., *supra* note 7, at 21.

unaware of their right to seek asylum.<sup>83</sup> Those who are aware of their rights have reported that immigration officials discourage them from applying for asylum by explaining that the applicants would be forced to remain in detention until the case is processed.<sup>84</sup> The magnitude of this problem becomes clear when one considers data showing that, in 2015, 30.2% of asylum applications were either dropped or abandoned.<sup>85</sup> In addition, asylum applicants report that their claims are often rejected for lack of “proof.”<sup>86</sup> One Honduran woman reported that the Mexican asylum officers rejected her claim because she did not have photographs documenting her domestic abuse.<sup>87</sup> Furthermore, “[m]any women interviewed [by UNHCR] perceived Mexico to be an unsafe place to claim asylum.”<sup>88</sup>

Compounding these problems is the fact that the Mexican asylum system is relatively new and the government has not sufficiently increased its capacity to screen migrants for protection concerns. Despite the increase in NTCA migrants, the Mexican Commission for Refugee Assistance employs only fifteen protection officers.<sup>89</sup> In order to help alleviate this problem, the UNHCR has offered to provide technical support to concerned governments in assessing displacement trends in El Salvador, Guatemala, and Honduras. Finally, while the establishment of the Crimes Investigation Unit for Migrants and Mexican Foreign Support Mechanism of Search and Investigation was a positive development, the effectiveness of this office remains to be seen.

### B. *Limitations of Indigenous Institutions*

As one might expect, indigenous judicial systems in Mexico do not have the authority to grant migrants asylum. Even

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83. *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, Inter-Am. Comm’n H.R. [IACHR], ¶ 535, OAS Doc. OEA/Ser.L/V/II.Doc.48/13 (Dec. 30, 2013), <http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf>.

84. Isacson et al., *supra* note 7, at 22.

85. COMAR, *Estadísticas*, [Statistics] 2016, *supra* note 69.

86. U.N. High Comm’n for Refugees, *Women on the Run*, *supra* note 60, at 45.

87. *Id.*

88. *Id.*

89. Knippen et al., *supra* note 73, at 3.



the formal justice systems only handle “minor” cases and have no jurisdiction to adjudicate asylum claims. Beyond asylum, however, these justice systems currently have limited ability to offer protection to indigenous migrants during their journeys.

An initial factor limiting indigenous justice systems’ involvement in crimes against migrant women is migrant routes. Unless migrants are victimized when traveling through an indigenous community, the involvement of such institutions is likely to be nonexistent. That being said, many migrants do travel through the state of Chiapas, which hosts an indigenous municipal court.<sup>90</sup>

In addition, indigenous courts apply the cultural norms of their specific group and community. Thus, the willingness of indigenous communities to intervene on behalf of an indigenous migrant from an outside ethnic group is another potentially limiting factor. In fact, these communities may not even realize that a migrant woman is indigenous given that many NTCA indigenous women hide their ethnicities for the sake of safety during their journeys. Consequently, unless the perpetrator is an individual from the community, the indigenous institutions may not perceive the crime as within their purview.<sup>91</sup>

Even if indigenous institutions in Mexico are willing to intervene on behalf of NTCA indigenous migrants, lack of reporting presents a significant barrier to justice. As we saw in Maria’s case, indigenous women may not always have the legal savvy and linguistic ability to assert their rights. In addition, NTCA women are generally untrusting of law enforcement because they come from countries with high levels of corruption and impunity.<sup>92</sup> In Honduras, indigenous leaders have been subject to arbitrary arrest, baseless criminal proceedings, and

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90. See *supra* Section IV(c).

91. See Rowland, *supra* note 51, at 10 (noting that the *Policía Comunitaria* “is obviously designed primarily for transgressions by local residents, and the treatment for suspects from outside the indigenous communities can be problematic”).

92. See, e.g., *Situation of Human Rights in Honduras*, Inter-Am. Comm’n H.R. [IACHR], ¶ 9, OAS Doc. OEA/Ser.L/V/II.Doc.42/15 (Dec. 31, 2015), <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf> (“Due to its failure to respond effectively and to allegations of corruption and ties with organized crime, the National Police [in Honduras] has lost the public’s trust.”).

violence.<sup>93</sup> In addition, many complaints filed by indigenous persons are not investigated or prosecuted.<sup>94</sup>

Furthermore, an additional barrier to justice is the fact that indigenous systems can, at times, reinforce discriminatory gender norms. Indigenous justice is typically based on the principle of *hacer el balance* (to make things balance out).<sup>95</sup> However, an indigenous woman's claim will often not be taken seriously if she is viewed as having acted contrary to accepted cultural norms.<sup>96</sup>

Despite the limited ability of indigenous justice systems to provide protection to NTCA migrant women, indigenous rights groups in Mexico can assist with this humanitarian crisis. While unity and solidarity are often the result of an ethnic group living in the same place, some indigenous rights organizations operating in other issue areas, such as the Assembly of Indigenous Migrants in Mexico, include indigenous persons from various ethnic groups.<sup>97</sup> UNHCR and the Mexican government should engage inclusive indigenous groups in the provision of services to NTCA migrants. Indigenous groups could provide outreach and "Know Your Rights" presentations to indigenous migrant women in detention centers. These groups could further identify additional protection concerns for indigenous migrants that might otherwise be overlooked.

In addition to educating migrant women on their rights, indigenous groups could provide asylum officers with increased information on cultural conditions impacting indigenous migrants' applications. For instance, in Honduras, government institutions identified one of the biggest obstacles for indigenous women accessing justice as cultural norms which give men all the power.<sup>98</sup> If allowed by the Mexican govern-

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93. *Id.* ¶ 82–88.

94. *Id.* ¶ 92–93.

95. María Teresa Sierra, *Indigenous Women, Law, and Custom*, in *DECODING GENDER: LAW AND PRACTICE IN CONTEMPORARY MEXICO* 109, 112 (Helga Baitenmann et al. eds., 2007).

96. *Id.* at 113.

97. Victoria Chenaut, *Perspectives in the Study of Indigenous Migration to Cities in Mexico*, *URBANITIES*, May 2015, at 3, 11 (2015).

98. Reina Rivera & Alex Matamoros, *El caso de Honduras (investigación)* [*The Case of Honduras (Investigation)*], in *ACCESO A LA JUSTICIA DE LAS MUJERES INDÍGENAS EN CENTROAMÉRICA* [ACCESS TO JUSTICE OF INDIGENOUS WOMEN IN CENTRAL AMERICA] INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS 119

ment, organizations could also utilize their unique knowledge to assist with training asylum officers in country conditions. For example, the organizations could explain that in Guatemala, language and economic barriers, geographic remoteness of indigenous territories, as well as patriarchal and discriminatory attitudes of law enforcement and justice officials, reinforce a system of indifference and might discourage victims from seeking protection and redress.<sup>99</sup>

Finally, the organizations should advocate for an active role in Mexico's asylum system. In Brazil, civil society plays an essential role in the process, interviewing asylum applicants and preparing legal briefs to be presented to the National Committee for Refugees for review during adjudication of migrants' claims.<sup>100</sup> The Mexican government should similarly engage civil society in the asylum process.

### C. *Alternative Avenues for Protection*

In December 2014, the United States government established the Central American Minors ("CAM") program in response to a surge of unaccompanied minors arriving at the southern border.<sup>101</sup> The program is an in-country refugee/parole program which allows qualifying parents in the United States to request access to the U.S. Refugee Admissions Program for their children residing in the NTCA.<sup>102</sup> While this program is limited in scope, it provides a safe and legal channel to protection for some indigenous children.

In January 2016, President Obama announced the expansion of access to the U.S. Refugee Admissions Program for vul-

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(2010), <https://www.iidh.ed.cr/IIDH/media/1543/acceso-a-la-justicia-de-las-mujeres-indigenas-ca.pdf>.

99. UNITED NATIONS CHILDREN'S FUND ET AL., *BREAKING THE SILENCE ON VIOLENCE AGAINST INDIGENOUS GIRLS, ADOLESCENTS AND YOUNG WOMEN* 8 (2013), [https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG\\_FINAL.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf).

100. KARINA SARMIENTO ET AL., U.S. COMM. FOR REFUGEES & IMMIGRANTS & ASYLUM ACCESS ECUADOR, *REFUGEE STATUS DETERMINATION IN LATIN AMERICA: REGIONAL CHALLENGES & OPPORTUNITIES* 36 (2013), [http://refugees.org/wp-content/uploads/2015/12/RefugeeStatus\\_ENGLISH.pdf](http://refugees.org/wp-content/uploads/2015/12/RefugeeStatus_ENGLISH.pdf).

101. U.S. CITIZENSHIP & IMMIGRATION SERV., *IN-COUNTRY REFUGEE/PAROLE PROCESSING FOR MINORS*, (<https://www.uscis.gov/CAM>) (last updated June 1, 2015).

102. *Id.*

nerable individuals and families living in the NTCA.<sup>103</sup> This program will grant Central Americans meeting the refugee admissions criteria access to resettlement.<sup>104</sup> It will also help protect indigenous Central American women by providing an alternative avenue for protection and therefore reducing the number who must embark on the dangerous journey north. The UNHCR will work with civil society to identify persons in need of refugee protection.<sup>105</sup>

These programs, combined with ongoing efforts by the UNHCR to expand regional asylum systems in Mexico, Panama, Costa Rica, and Belize, provide hope that the indigenous women of Central America will finally receive the protection they are owed.

## VII. CONCLUSION

In the midst of a growing humanitarian crisis, Mexico's pluralistic legal system has unfortunately not provided indigenous female migrants an alternate option for protection. These highly vulnerable individuals currently face numerous barriers to accessing asylum and redress when victimized. Thus, efforts by the U.S., UNHCR, indigenous rights organizations, and other civil society members are necessary to find ways to protect these women and aid their access to justice.

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103. Press Release, The White House, Fact Sheet: The United States and Central America (Jan. 14, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/15/fact-sheet-united-states-and-central-america-honoring-our-commitments>.

104. *Id.*

105. *Id.*